UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of the Application of	)	
	)	
Public Service Company of Oklahoma,	)	
Associated Electric Cooperative, Inc.	)	Docket Nos. STN 50-556
and	)	STN 50-557
Western Farmers Electric Cooperative	)	
	)	
(Black Fox Station, Units 1 and 2)	)	

APPLICANTS' ANSWER TO THE MOTION OF THE ATTORNEY GENERAL FOR THE STATE OF OKLAHOMA FOR AN INDEFINITE STAY OF THE ISSUANCE OF AN INITIAL DECISION

The Attorney General for the State of Oklahoma (the "Attorney General") filed a motion with this Atomic Safety and Licensing Board ("Licensing Board") requesting that the issuance of an Initial Decision in this proceeding be stayed indefinitely. Pursuant to the Rules of Practice of the Nuclear Regulatory Commission ("NRC" or the "Commission"), Public Service Company of Oklahoma ("PSO"), Associated Electric Cooperative, Inc. and Western Farmers Electric Cooperative, Inc. ("Applicants") hereby file this answer opposing the grant of the relief sought by the Attorney General.[1]

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[1] By motion filed April 30, 1979, Applicants requested an extension of time in which to answer to and including May 11, 1979. The motion was granted by Order of the Licensing Board dated May 1, 1979.

The motion must be denied because (1) the Attorney General does not have standing to file such a motion with this Licensing Board, and (2) the Attorney General has not met the legal requirements for obtaining a stay of these proceedings. Furthermore, there is no need to grant such a stay, as other remedies are available to the Attorney General.

I. THE ATTORNEY GENERAL DOES NOT HAVE STANDING TO FILE THE MOTION BECAUSE IT IS OUTSIDE THE SCOPE OF THE STATE OF OKLAHOMA'S PARTICIPATION IN THIS PROCEEDING

The Attorney General's petition requesting that the State of Oklahoma be admitted as an interested state, coming as it did at the eleventh hour, was not granted without qualification as the Licensing Board made clear in its Order of March 8, 1979. Rather, the Licensing Board, after noting that the petition was "most untimely,"[2] enumerated the conditions and limitations under which the State of Oklahoma would be permitted to participate. First, the State of Oklahoma was required to take the record as it found it.[3] Second, the State during the in camera sessions would merely be allowed to inspect the extracts from the Reed Report.[4] Third, the State would be allowed to cross-examine witnesses during the in camera sessions but would

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2 Tr. 8468.

3 Tr. 8486.

4 Id.

not be permitted to present its own witnesses.[5] Fourth, the State could file proposed findings of fact, conclusions of law and briefs "on the balance of the matters that are hereafter to be considered in open session," and upon the matters to be considered in the in camera sessions.[6] The limitations imposed by the Licensing Board have resulted in a very narrow sphere in which the State of Oklahoma can legitimately participate. This was acknowledged, and complained of, by the Attorney General in the "Notice of Declination of State of Oklahoma to File Proposed Findings of Fact and Conclusions of Law on the Limited Record," filed April 5, 1979, in which the Attorney General declined to file proposed findings of fact because of limitations which allegedly "unnecessarily and unreasonably" limited the scope of the State's participation.

Despite these clear restrictions, however, the Attorney General has moved this Licensing Board to indefinitely stay issuance of the Partial Initial Decision concerning health and safety matters in this proceeding because of the pendency of an investigation into the Three Mile Island accident and of an alleged proceeding before the Oklahoma Corporation Commission ("OCC"). Supposedly, these proceedings may provide information that "could show a fundamental change in circumstances concerning PSO's financial qualifi-

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5 Tr. 8487.

6 Id. (emphasis supplied), Tr. 8599.

cations and/or additional data by which to analyze the Black Fox Station's technical specifications."[7] The issues upon which the Attorney General seeks a stay of the issuance of the Partial Initial Decision, financial qualifications and unidentified safety and technical issues relating to technical specifications for the Black Fox Station, however, are not within the ambit of issues in which this Licensing Board permitted the State of Oklahoma to participate. Only one day of hearings was held after the State of Oklahoma was admitted as an interested state. Thus, only issues discussed during that day, February 28, 1979, can properly be raised by the State of Oklahoma. A review of the transcript for that day demonstrates that no issues concerning financial qualifications or technical matters having even a remote relationship to Three Mile Island were dealt with on February 28, 1979.[8] Accordingly, the Attorney General's motion should be dismissed.

In addition to the fact that the issues involved in the instant motion are not ones which the Attorney General may properly raise, the motion itself can only be said to come with ill grace. The Attorney General did not attempt to participate in the Black Fox proceeding until the hearings

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[7] Attorney General's Motion at 7-8.

[8] Tr. 8500-8601. In addition to the in camera consideration of certain Reed Report matters, two issues were the subject of evidentiary presentation on February 28, 1979, viz., Board Question 1-1 concerning loose parts monitoring and an update of the testimony of the NRC Staff and the Applicants on intergranular stress corrosion cracking.

were all but concluded, and then made the specific representation in its petition to participate that "petitioner's representation should not serve to substantially broaden the issues nor delay the proceedings."[9] The Attorney General's attempt to halt further activities in the Black Fox docket for an indefinite period of time is a complete reversal of its position not to cause delay. Given this background, and the fact that the Attorney General declined the opportunity to file proposed findings of fact and conclusions of law, his present action can only be characterized as an abuse of the NRC hearing process.

II. THE LEGAL STANDARDS GOVERNING THE CONDUCT OF ADMINISTRATIVE PROCEEDINGS DO NOT JUSTIFY A STAY IN THIS INSTANCE

A review of decisions from the federal courts and NRC tribunals, as well as an analysis of the Administrative Procedure Act, demonstrates that an indefinite stay of the issuance of a Partial Initial Decision in this docket would not only be unwarranted but would be in contravention of established principles of administrative law. The Attorney General's motion must therefore be denied on the merits.

In assessing the Attorney General's request for a stay of the issuance of the Partial Initial Decision, the standard to be utilized is that which obtains when a court

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[9] Petition by the Attorney General for Participation as an Interested State at 2. Tr. 8470 and 8478.

is asked to stay its proceedings pending the outcome of proceedings before another tribunal. The landmark decision articulating the standard by which to judge such a stay request is Landis v. North American Company, 299 U.S. 248 (1936). In Landis, the United States Supreme Court reviewed a district court's grant of a stay of all proceedings until the conclusion of the trial and appeal of a similar suit in another court. That situation is clearly the most analogous to the facts before this Licensing Board, for the Attorney General is asking for a stay pending the outcome of investigations being conducted by other bodies.[10] The Supreme Court in Landis held, based upon an analysis under a two-part test, that the stay order entered by the district court constituted a clear abuse of discretion. The application of that test to the Attorney General's motion demonstrates that it must be denied.

A. A Stay Would Harm Both Applicants And The Public Interest

The first prong of the Landis test was described by Judge Cardozo as follows:

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[10] For this reason the test for the grant of a stay of the effect of a decision pending appeal, first articulated in Virginia Petroleum Jobbers Ass'n v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958) and later codified by the NRC in 10 C.F.R. §2.788(e), is inapplicable here. Furthermore, if the four criteria of Petroleum Jobbers are analyzed, it becomes apparent that the first is inappropriate to the situation at hand and that the Attorney General has made no showing under the second criterion (nor could he make such a showing). The third and fourth factors are substantially identical to the Landis test, which will be discussed infra.

> [T]he suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else. 299 U.S. at 255.

The Sixth Circuit applied the Landis test and reversed a district court's grant of a stay of proceedings in Ohio Environmental Council v. U.S. District Court, 565 F.2d 393 (6th Cir. 1977), noting:

> [I]t is also clear that a court must tread carefully in granting a stay of proceedings, since a party has a right to a determination of its rights and liabilities without undue delay. 565 F.2d at 396.

Thus, under the first part of the Landis test, the initial burden is on the party seeking a stay to show that there is a pressing need for delay, and that neither the other party nor the public will suffer harm from the entry of the order. This standard has also been followed in Dellinger v. Mitchell, 442 F.2d 782 (D.C. Cir. 1971) and Ellsberg v. Mitchell, 353 F. Supp. 515 (D.D.C. 1973), both of which rejected the use of a stay of proceedings.

Judging the Attorney General's motion by this standard it is clear that no pressing need has been shown for the delay nor has he addressed the harm that would accrue to Applicants from that delay. As Applicants discuss in Section III, infra, the fact that this is a construction permit (not an operating license) proceeding and the fact that other remedies are available to the Attorney General militate against the need for a stay. Furthermore, both Applicants and the public interest would be harmed by the

entry of a stay order. As Mr. Vaughn L. Conrad indicated in his affidavit (which was filed with Applicants' Brief In Support of General Electric's Motion To Quash Subpoena on November 7, 1978) the cost of one day's delay in the issuance of the construction permits for the Black Fox Station is at least $338,000.

The concept that delay can be harmful, and in some cases unconstitutional, has been recognized in both NRC and court cases. In Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671 (1975), the Atomic Safety and Licensing Appeal Board ("Appeal Board") stated that an applicant for an NRC license is entitled to know at the earliest practicable time whether or not the applicant will receive that license. "If a decision in its favor ultimately results, the applicant will indeed have been injured if there has been an unjustifiable delay in reaching that decision."[11] Similarly, the Appeal Board found that there was "a compelling public interest in having an early decision" on the license in question.[12]

In Smith v. Illinois Bell Telephone Company, 270 U.S. 587 (1926), the Supreme Court held that a state commerce commission's five-year delay in processing a requested rate increase was so lengthy as to deprive the utility of property without due process of law in violation of the Constitution.

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11 2 NRC at 684.

12 Id.

An agency's inaction similarly was found to have substantially nullified a party's rights in American Broadcasting Company v. Federal Communications Commission, 191 F.2d 492 (D.C. Cir. 1951). In that case the Federal Communications Commission ("FCC") temporarily assigned one radio station to a frequency already held by another station. Despite the objections of the original holder of the frequency, the FCC ruled that it would maintain the status quo pending the outcome of certain "clear channel proceedings." After ten years had elapsed, the Court of Appeals for the District of Columbia Circuit held that since there was no showing that the clear channel investigation would be completed in the near future, the FCC could not maintain the status quo indefinitely by arguing that the ultimate determination of the radio station's status depended upon the outcome of the investigation:

> [C]ourts must act to make certain that what can be done is done. Agency inaction can be as harmful as wrong action. The Commission cannot, by it delay, substantially nullify rights which the Act confers though it preserves them in form. 191 F.2d at 501.

American Broadcasting is strikingly similar to the instant situation, for the Attorney General seeks to stay the issuance of the Partial Initial Decision pending the outcome of various investigations, a stay which would substantially nullify Applicants' right to a decision on its application for construction permits under the Atomic Energy Act of 1954, as amended.

B. The Duration of the Stay Requested Is Unlawful

The second part of the Landis test goes to the duration of the stay granted. As Justice Cardozo explained for the Court:

> The stay is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least as they are susceptible of limits have been reached, the fetters should fall off. 299 U.S. at 257.

The Court of Appeals in both Dellinger and Ohio Environmental Council found that the stay orders entered by the district courts were unlawful under this duration test, the court in Ohio Environmental Council stating that the stay order "could place this case in limbo for years."[13] That is exactly where the Black Fox proceeding would be if the Attorney General's motion were granted, for the State demands an "indefinite" stay of the issuance of the Partial Initial Decision.[14] The happening which would determine the length of the stay, the investigation of the causes of the Three Mile Island accident and an analysis of whether those causes warrant reopening the Black Fox record, could take well over a year, as discussed more fully in Section III, infra. A stay of that length is unwarranted.

In addition to the Landis test, the Administrative Procedure Act ("APA") inveighs against the introduction of

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13 565 F.2d at 396.

14 Attorney General's motion at 1 and 8.

delays into the administrative process. Prior to its amendment in 1966, Section 6(a) of the Act provided that "every agency shall proceed with reasonable dispatch to conclude any matter presented to it...." This was complemented by Section 10(e)(A) which directed the reviewing court to "compel agency action unlawfully withheld or unreasonably delayed." The Fourth Circuit has held that that section is an affirmative statutory declaration of the Congressional purpose that the requirement of Section 6 gives rise to legally enforceable rights of the parties to the proceeding. Deering Milliken, Inc. v. Johnston, 295 F.2d 856, 863 (4th Cir. 1961). In that case the district court had found that rehearings ordered by the National Labor Relations Board were repetitive and constituted unreasonable delay in violation of Section 6(a); the hearings were therefore enjoined. The Fourth Circuit accepted this finding and concluded that Deering had a right to be free from supplemental hearings which were repetitive, purposeless and oppressive. Only hearings on newly discovered evidence were permitted.

The current version of Section 6(a) provides that "[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it."[15] Professor Goldman has stated that "[i]t does not seem likely that Congress intended to dilute its statutory command by deleting 'reasonable dispatch' and substituting

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[15] 5 U.S.C. §555(b) (emphasis supplied).

'reasonable time' as a standard."[16] This is especially true in view of the fact that old Section 10(e)(A) authorizing a court to compel agency action unlawfully withheld or unreasonably delayed has been re-enacted verbatim in the new version of the APA.[17] A grant of the indefinite stay of the Partial Initial Decision requested by the Attorney General would be a violation of the reasonable time provision of the APA.

Thus, the Attorney General's request for a stay fails to meet the Landis standards and runs afoul of the laws and legal principles governing administrative proceedings. The motion must therefore be denied.

III. NEITHER THE THREE MILE ISLAND INVESTIGATION NOR THE OKLAHOMA CORPORATION COMMISSION PROCEEDING JUSTIFIES A STAY

The heart of the Attorney General's motion for a stay of the issuance of the Partial Initial Decision is that the Three Mile Island and OCC investigations may provide information to the Licensing Board "that could show a fundamental change in circumstances concerning PSO's financial qualifications and/or additional data by which to analyze the Black Fox Station's technical specifications."[18] Thus, the issuance of the Partial Initial Decision should be

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16 Goldman, "Administrative Delay and Judicial Relief," 66 Mich. L. Rev. 1423, 1441 (1968).

17 5 U.S.C. §706(1).

18 Attorney General's motion at 7-8.

stayed "to preserve the Board's discretion to re-open the record if more recent data suggests a significant change in circumstance."[19] This argument errs in several respects, as will be demonstrated below.

A. The Three Mile Island Investigation Does Not Warrant A Stay

The open-ended nature of the stay which the Attorney General is requesting is evident once one realizes the number and scope of the investigations currently taking place into the accident at Three Mile Island. For, contrary to the implication in the instant motion, there is not one investigation of this event. Rather, there are to date seven separate investigations being conducted by the federal government into the accident, including those by:

1. The Subcommittee on Nuclear Regulation of the Senate Committee on the Environment and Public Works;

2. The Subcommittee on Health and Scientific Research of the Senate Committee on Human Resources;

3. The Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs;

4. The President's Commission on the Accident at Three Mile Island;

5. The General Accounting Office;

6. The Advisory Committee on Reactor Safeguards;

7. The Nuclear Regulatory Commission.

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19 Id. at 8.

In addition, the Pennyslvania Public Utility Commission is conducting an investigation into this matter. The private sector is also investigating the Three Mile Island accident; for example, the Electric Power Research Institute is investigating at the request of the Edison Electric Institute. In view of this array of investigations, each with its own scope and timetable, it is apparent that a stay pending completion of these investigations, and an analysis of their results to determine if they have any application to Black Fox, would indeed be lengthy.

Aside from the length of the delay, however, Applicants object to a stay on the ground that it is totally unnecessary. In the first place, the Three Mile Island plant is a Pressurized Water Reactor ("PWR") and Black Fox is a Boiling Water Reactor ("BWR"). Significant design differences exist between these two types of nuclear power reactors. This factor was undoubtedly taken into account by the NRC Staff during their follow-up advice with respect to the Three Mile Island matter to operators of nuclear power reactors. Specific actions involving potential design changes, changes to technical specifications and changes in operating procedures were directed to holders of operating licenses of PWRs of various manufacture.[20] On the other

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[20] See IE Bulletin Nos. 79-05A, 79-06, 79-06A and 79-06B included in NRC Staff Board Notifications dated April 24 and 30.

hand, holders of operating licenses for BWRs were merely requested to review the applicability, if any, of the Three Mile Island information to operating BWRs.[21]

Second, it is essential to keep in mind that this is a construction permit proceeding. To date, the only action taken by the NRC Staff with regard to BWRs in light of Three Mile Island has been to send IE Bulletin No. 79-08 to owners of operating BWRs. No action has been required of BWR construction permit holders. This is logical and proper in view of the fact that at the construction permit stage the design of the plant has not been finalized and there is ample opportunity to make any necessary changes before issuance of the operating license. The Supreme Court has recognized that because nuclear power technology is a fast-developing field this two-step licensing procedure is warranted, and thus, the Commission may defer a definite safety finding at the time of the issuance of a construction permit until the time operation is actually licensed. Power Reactor Development Co. v. International Union, 367 U.S. 396 (1961).

The third reason why granting a stay of the Partial Initial Decision is unwarranted is the fact that if the investigations do bring to light information which the Attorney General believes is significant, he would not be without a remedy. Even if the Licensing Board had issued its Partial Initial Decision, a motion could be made with

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[21] See IE Bulletin No. 79-08, April 14, 1979 included in NRC Staff Board Notification dated April 24, 1979.

the Appeal Board or the Commission, as appropriate, to reopen the record because of newly discovered and significant information.[22] After the Initial Decision has become final, the Attorney General could file a request under 10 C.F.R. §2.206 with the Director of Nuclear Reactor Regulation to institute a proceeding pursuant to §2.202 to modify the construction permits for Black Fox because of the Three Mile Island related information.

As other methods of obtaining relief are provided by the Commission's regulations, it would be senseless and unnecessary to stay issuance of the Partial Initial Decision on the off-chance that the Three Mile Island investigations may turn up something relevant to Black Fox. Such a course of action would be similar to the NRC refusing to proceed with a licensing action because of the contingency that one of the other federal or state agencies with regulatory jurisdiction over some of the aspects of a nuclear power plant might eventually choose to withhold a necessary permit or approval. The Appeal Board has expressly disapproved such a procedure on the ground that it would be productive of little more than untoward delay.[23]

What has been said above regarding technical matters is equally applicable to the area of financial

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22 Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320 (1978).

23 Cleveland Electric Iluminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 748, (1977); Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-171, 7 AEC 37, 39 (1974).

qualification requirements, an issue also stressed by the Attorney General. He justifiess his request for a stay, in part, upon the fact that "it is unknown at this date what additional financial qualification standards might be forthcoming from the NRC, spawned by the TMI-2 accident."[24] To take no action in the Black Fox docket because of the possibility that new standards might be forthcoming, however, would clearly serve no purpose other than delay, especially in view of the other remedies available to the Attorney General outlined above.

B. The Oklahoma Corporation Commission Proceeding Does Not Warrant A Stay

In paragraph 7 of the Attorney General's motion, reference is made to an action brought by the Attorney General before the Oklahoma Corporation Commission:

> to determine, inter alia what would be the ultimate cost of Black Fox Station, how the Company planned to finance its portion of said facility and what effect the recent accident at TMI-2 is expected to have upon the ability of that utility to finance the plant.

The alleged pendency of that proceeding before the OCC is another reason given by the Attorney General to justify a stay of the Partial Initial Decision in this case, for the OCC investigation may furnish information showing a change in circumstances concerning PSO's financial qualifications.[25]

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24 Attorney General's motion at 7.

25 Id. at 7-8.

The Attorney General is being somewhat less than candid in putting forth this argument, however, for three days before the motion was filed the OCC wrote a letter to the Attorney General explaining that the OCC does not have the authority to pass upon utility plans for the building of generating facilities.[26] The OCC declined to institute the investigation described in the Attorney General's motion. Instead, the OCC suggested that the Attorney General formulate questions which would be submitted to PSO for response. Such a procedure has been used before by the OCC. This is hardly the type of wide-ranging inquiry detailed in the instant motion, and in view of the OCC's recognition of the limitations placed upon its jurisdiction in this area, there could be no reason to grant a stay of the Partial Initial Decision until PSO responds to whatever questions, if any, the Attorney General ultimately chooses to pose. This argument for a stay amounts to nothing but the advocation of delay for the sake of delay.

CONCLUSION

For the reasons set forth above, the motion of the Attorney General should be denied for lack of standing. If this Licensing Board considers the motion on its merits, the

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[26] A copy of this letter is attached as Exhibit A.

motion should be denied as the Attorney General has not met the legal requirements for a stay of these proceedings.

Joseph Gallo

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May 11, 1979

Exhibit A

KLAHOMA
Corporation Commission
JIM THORPE OFFICE BUILDING
OKLAHOMA CITY, OKLAHOMA 73105

April 16, 1979

The Honorable Jan Eric Cartwright
Attorney General of Oklahoma
112 State Capitol
Oklahoma City, Oklahoma 73105

Re: APPLICATION AND COMPLAINT OF THE STATE OF OKLAHOMA, EX REL. JAN ERIC CARTWRIGHT ATTORNEY GENERAL, AN INVESTIGATION, REVIEW AND EXAMINATION OF THE PRACTICES, RULES, REGULATIONS, PRESENT AND FUTURE CONSTRUCTION PROPOSALS AND PROJECTS AND THE EFFECT THEREOF ON THE RATEPAYERS OF THE PUBLIC SERVICE COMPANY OF OKLAHOMA.

Cause No. 26582

Dear Mr. Attorney General:

This letter is written in regard to the above-referenced application and complaint. We appreciate the nature of the interest demonstrated in that application and complaint, and we share the same.

But, as you know, our authority is limited by state law. The legislature has not seen fit to grant us the authority to approve or disapprove utility plans for the building of generating facilities. As we understand it, therefore, such authority as that with regard to nuclear facilities rests solely with the Nuclear Regulatory Commission.

We read that you are seeking to have the Nuclear Regulatory Commission hearings on the Black Fox Station re-opened. We hope you will diligently pursue that possibility for the benefit of all Oklahomans. That would be the ideal forum for such concerns as you pointed to in the first part of your Application and Complaint.

To the best of our knowledge Public Service of Oklahoma has not passed any of the costs of its Black Fox Station on to the ratepayer. Indeed, it has been the posture of the Commission to specifically prohibit Public Service from doing so--at least until such time (if ever) when the facility is finished and serving the public.

Historically, of course, utilities have asked that the ratepayer be charged with recovery of its costs for building a generating facility once that facility is serving the ratepayer. Even the most optimistic projections indicate that would not be until 1984, at the earliest, for Public Service with regard to the Black Fox Station. And, obviously, none of us know who will compose the Corporation Commission at that time. But, it goes without saying, any future-oriented decision we would make about the Black Fox Station would not be binding on them.

Nevertheless, we stand ready with you to help the public to become better educated with regard to the vital issue of nuclear power. And we will be glad to press toward such determinations as might be helpful to the public. We suggest a means of accomplishing those ends while safeguarding against unduly lengthy hearings which could totally disrupt the vital day-to-day functions of the Commission and themselves prove very costly to the public.

As you will recall in January of this year the Commission addressed certain questions about Black Fox to Public Service Company on your behalf. We received rapid, detailed and, apparently, complete written response. We made that response available to you upon receipt and consider it public information. We advised you then that we would be glad to similarly direct any further questions you might have to Public Service.

In accordance with that earlier action, we now request that you translate your concerns as reflected in your Application and Complaint into specific questions which you would like to have addressed to Public Service. We will submit the same to Public Service on your behalf and direct immediate response. And, as always, all in the way of response will be treated as public information.

You might also submit a list of those you think might have good evidence to effectively supplement or challenge answers submitted by Public Service. With that list and Public Service's answers in hand, we will then assess how the public might best be served by the Corporation Commission beyond that point. And, with your cooperation and guidance, we will do all within reason and our proper authority to make certain the public interest is well protected.

Meanwhile, you might wish to know that Commission staff is now in the process of auditing Public Service Company of Oklahoma's financial records in preparation for fuel-adjustment hearings scheduled to begin May 15, 1979, and in further preparation for a rate hearing that the company will be required to file for soon under state law. Part of our auditing effort will be co-ordinated with a corresponding effort by the Federal Energy Regulatory Commission. Moreover, we anticipate calling on Public Service Company to undergo a management audit--including evaluation of its construction program--prior to its rate hearing.

We feel many of your concerns (and ours) will be addressed through the designated audits. The results of those audits should speak not only to the concerns you raised regarding Black Fox, but also to the other matters you mentioned--namely, system capacity, off-system sales and wheeling arrangements.

As in all cases, we will want to coordinate with you and invite your cooperation with us to make certain that information acquired through our mutual efforts is properly entered and has full impact in the aforementioned fuel-adjustment hearings and later rate hearing for Public Service Company. For it is through such coordination and cooperation, of course, that we may best fulfil our mutual charge to protect the public interest.

Sincerely,

Hamp Baker, Chairman

Bill Dawson, Vice Chairman

Norma Eagleton, Commissioner

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of the Application of Public Service Company of Oklahoma, Associated Electric Cooperative, Inc. and Western Farmers Electric Cooperative (Black Fox Station, Units 1 and 2)	)	Docket Nos. STN 50-556 STN 50-557

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANTS' ANSWER TO THE MOTION OF THE ATTORNEY GENERAL FOR THE STATE OF OKLAHOMA FOR AN INDEFINITE STAY OF THE ISSUANCE OF AN INITIAL DECISION has been served on each of the following persons by deposit in the United States mail, first-class postage prepaid, this 11th day of May, 1979.

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